

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER: [REDACTED] TL-N-1523-00

date: APR 07 2000

to: District Director, [REDACTED] District  
Chief, Examination Division  
Attention: [REDACTED], Revenue Agents

from: District Counsel, [REDACTED] District, [REDACTED]

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subject: [REDACTED]  
HMOs Statute of Limitations

This memorandum is in response to your recent request for our advice regarding the above subject.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to the attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

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ISSUE

Who is the proper party to execute a consent to extend the statute of limitations for assessment, Form 872, on behalf of several Health Maintenance Organizations, HMOs, affiliated with [REDACTED], when the HMOs merged into [REDACTED] and are no longer in existence?

CONCLUSION

As is more fully described below, the consent to execute the statute, Form 872, should be executed by an authorized representative of [REDACTED].

FACTS

The facts are as provided to our office by your memorandum dated March 6, 2000, and our several conversations and requests for additional information.

Prior to [REDACTED], the affiliated group of [REDACTED], hereinafter [REDACTED], included four Health Maintenance Organizations, hereinafter HMOs, that were tax-exempt entities pursuant to the provisions of I.R.C. § 501(c)(4). The HMOs, [REDACTED], (EIN [REDACTED]); [REDACTED], (EIN [REDACTED]); [REDACTED], (EIN [REDACTED]); and [REDACTED], (EIN [REDACTED]), were incorporated under the laws of the State of [REDACTED].

In [REDACTED], three of the HMOs merged into [REDACTED], EIN [REDACTED]. A Certificate of Merger/Consolidation, along with Restated Articles Of Incorporation for [REDACTED], were filed with the [REDACTED] - [REDACTED], on [REDACTED]. As the surviving HMO, [REDACTED] of [REDACTED] was renamed [REDACTED], hereinafter [REDACTED] and maintained the same EIN. The merger became effective [REDACTED]. Apparently, a plan of merger was not executed.

For the years at issue, [REDACTED], the HMOs filed returns as follows:

<u>HMO</u>	<u>Tax Period</u>	<u>Returns Filed</u>	<u>Date</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] (Short Period) (Short Period)	[REDACTED] T T T	[REDACTED]
[REDACTED]	[REDACTED] (Short Period)	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] (Short period) (Short Period)	[REDACTED] T T T	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] T	[REDACTED]

As part of its upcoming [REDACTED] audit cycle, Exam would like to also audit the HMOs. In light of the merger of the HMOs, Exam sought our assistance in protecting the HMOs statute of limitations, the first of which will expire [REDACTED].

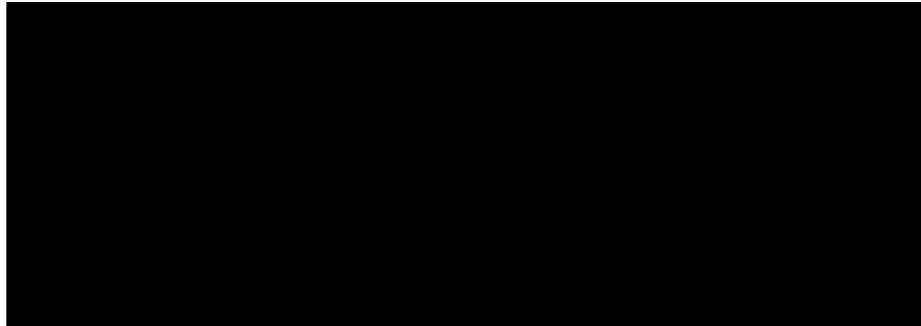
#### DISCUSSION AND LEGAL ANALYSIS

As a general rule, tax must be assessed within 3 years of the filing date of the return. I.R.C. § 6501(a). However, pursuant to I.R.C. § 6501(c)(4), the Internal Revenue Service and the taxpayer may consent in writing to extend the time for making an assessment. Internal Revenue Code section 6061 provides that any return, statement, or document made under the internal revenue laws must be signed in accordance with the applicable forms or regulations.

Treasury Regulations section 301.6501(g)-1(b) provides as follows:

... if a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if the taxpayer is later held to be a taxable organization for the taxable year for which the return was filed, such return shall be deemed to be the return of the organization for the purpose of section 6501.

With respect to mergers or consolidations, [REDACTED] [REDACTED]  
[REDACTED], in pertinent part, provides as follows:



In addition, [REDACTED] provides that the *"surviving or new corporation is thenceforth responsible and liable for all liabilities and obligations of each of the corporations merged or consolidated."* (Emphasis added).

In this case, although the HMOs were shown as members on the Affiliations Schedule, Form 861, filed with the [REDACTED] return, the HMOs, as tax-exempt entities, cannot join in the filing of a consolidated return. I.R.C. § 1504(b)(1). As a result, the consolidated return regulations found in Treas. Reg. § 1.1502-77 are not applicable.

However, based on the above cited provisions of [REDACTED] law, especially [REDACTED], [REDACTED], as the surviving corporation, becomes responsible for the tax liabilities of the merged HMOs.

Accordingly, the consent, Form 872, should be signed by an officer duly authorized to act on behalf of [REDACTED]. See, Rev. Rul. 71-467, 1971-2 C.B. 411; and Rev. Rul. 83-41, 1983-1 C.B. 349.

With respect to the [REDACTED], [REDACTED], and [REDACTED] HMOs, the Form 872 should show as the taxpayer [REDACTED] as "successor in interest to" the respective HMO. For example, with regard to [REDACTED], the 872 would reflect [REDACTED] (EIN xx-xxxxxxx) as successor in interest to [REDACTED] (EIN xx-xxxxxxx).

With respect to the [REDACTED] HMO, the Form 872 should show as taxpayer [REDACTED] (EIN xx-xxxxxxx), formerly [REDACTED].

In addition, since [REDACTED] law makes [REDACTED] responsible for the liabilities of the HMOs, no other forms, such as a Form 977, are necessary.

As a reminder, pursuant to the newly enacted provisions of I.R.C. § 6501(c)(4)(B), at the time the request for the consent is made, the taxpayer should be notified of its right to either refuse to sign the consent, or to limit the consent to particular issues or a particular period of time. Publication 1035, Extending the Tax Assessment Period, and Letter 907 (DO) (Rev. 2-2000), are the best means for providing this notification.

We have coordinated this case with our National Office, and it concurs with our advice. However, the advice remains subject to a 10 days post-review by the National Office.

We hope the foregoing fully addresses your concerns regarding this case. However, should you have any questions or require any additional assistance, please feel free to contact the undersigned at [REDACTED].

[REDACTED]  
District Counsel

By: [REDACTED]

Assistant District Counsel

CC: [REDACTED]  
Case Manager.